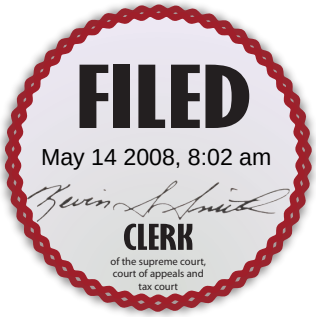

APPELLANT PRO SE:

SONNIE EBIKWO
Westfield, Indiana

IN THE
COURT OF APPEALS OF INDIANA

SONNIE EBIKWO,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A02-0708-CV-718
	)	
LINDA ROBBINS and JEFFREY HUFF,	)	
	)	
Appellees-Plaintiffs.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable J. Richard Campbell, Judge
The Honorable David K. Najjar, Magistrate
Cause No. 29D04-0704-SC-542

May 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Pro-se Appellant-Defendant Sonnie Ebikwo ("Ebikwo") appeals a small claims court judgment awarding Appellees-Plaintiffs Linda Robbins ("Robbins") and Jeffrey Huff ("Huff") (collectively, "the Appellees") the amount of $5776.20. We affirm.

Issue

Ebikwo raises numerous issues,[1] which we consolidate and restate, as whether the trial court's judgment in favor of the Appellees for damage caused by frozen pipes in the leased condo was clearly erroneous.

Facts and Procedural History

Robbins owns a condo in Westfield, Indiana, and listed it with Huff's real estate agency to be leased. On August 16, 2006, Ebikwo entered into a contract to lease the condo. An agent of Huff's real estate agency, Tina Matherly ("Matherly"), arranged and executed the lease on behalf of Robbins. The lease was for six months, ending February 12, 2007, and required a damage deposit of $1075.00, which Ebikwo paid.

On January 5, 2007, anticipating Ebikwo's move to a home, Matherly and Ebikwo did a walkthrough of the condo. At least a deep freezer and curtains were still in the condo. At that point, Ebikwo did not return the keys to Matherly.

On February 12, 2007, Ebikwo had entered the condo and called Matherly to report that the condo was flooded with water. Matherly contacted Huff, who drove to the condo. When Huff arrived, water was pouring through the vents, the toilets were cracked and the

[1] Ebikwo lists five issues at the outset of his brief, but only has argument sections addressing three. We therefore only address the developed arguments.

water inside them was frozen, the ceilings and walls had water damage, and there was standing water. Huff testified that when he entered, Ebikwo and another individual were taking curtains down. Huff also discovered that the central air unit was set to "Off," which allowed the condo to become so cold during the below freezing temperatures experienced in February of 2007 that the pipes burst.

On April 6, 2007, Robbins and Huff filed a small claims Notice of Claim, naming Ebikwo as defendant. After the matter was tried on July 11, 2007, the trial court found in relevant part:

> The Court now finds that the parties entered into a lease agreement for the premises at 556 Gibson Drive, Westfield, Indiana that was to begin on August 12, 2006 and continue until February 12, 2007. The Court further finds that Defendant vacated the premises sometime between January 5, 2007 and February 12, 2007. The Court finds that Plaintiffs, or agents working on behalf of Plaintiffs, knew that Defendant intended to vacate the premises prior to the lease termination date, but did not have actual knowledge of the date Defendant left the residence.

Appendix at 3.

The trial court concluded the incurred damages were $6418, which included a credit for the security deposit. However, the trial court concluded that Robbins and Huff were partially at fault as they could have followed up with Ebikwo to determine when he actually moved out, and the award of damages was reduced by ten percent.

Ebikwo now appeals.

Discussion and Decision

I. Standard of Review

As an initial matter, we note that Robbins and Huffs did not file an appellee's brief in this case. Where the appellee fails to file a brief on appeal, we may in our discretion reverse the trial court's decision if the appellant make a *prima facie* showing of reversible error. McGill v. McGill, 801 N.E.2d 1249, 1251 (Ind. Ct. App. 2004). This standard relieves this court of the burden of developing arguments for the appellee. Id.

Judgments in small claims action are "subject to review as prescribed by relevant Indiana rules and statutes." Ind. Small Claims Rule 11(A). When reviewing claims tried by the court without jury, the reviewing court shall not set aside the judgment "unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind. Trial Rule 52(A). In determining whether a judgment is clearly erroneous, we do not reweigh the evidence or determine the credibility of witnesses but consider only the evidence that supports the judgment and reasonable inference to be drawn therefrom. Counceller v. Ecenbarger, Inc., 834 N.E.2d 1018, 1021 (Ind. Ct. App. 2005). A judgment in favor of a party having the burden of proof, i.e., Robbins and Huff, will be affirmed if the evidence was such that from it a reasonable trier of fact could conclude that the elements of the party's claim were established by a preponderance of the evidence. Id. This deferential standard of review is particularly important in small claims actions, where trials are "informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law." Ind. Small Claims Rule 8(A).

II. Analysis

On appeal, we first address Ebikwo's assertion that the hearing was based on incomplete evidence because Matherly was not in attendance. However, Ebikwo had the ability to have Matherly subpoenaed to compel her attendance, but did not do so. See Ind. Small Claims Rule 8(B).

Although Matherly's presence could have provided a more complete picture of the interaction of the parties, a reasonable trier of fact could conclude from the evidence presented that the elements of Robbins's and Huff's claim of negligence were established by a preponderance of the evidence. To succeed on a claim of negligence, the Appellees had to prove (1) a duty owed to them by Ebikwo; (2) a breach of that duty; and (3) injury to them proximately caused by that breach. See Kincade v. MAC Corp., 773 N.E.2d 909, 911 (Ind. Ct. App. 2002). Negligence will not be inferred; rather, all of the elements of a negligence claim must be supported by specific facts designated to the trial court or reasonable inferences that might be drawn from those facts. Id.

Ebikwo essentially only challenges who had control of the condo when the pipes froze, thus determining who had the responsibility or duty to oversee the condition of the property. Ebikwo argues that the evidence demonstrates that he relinquished control of the property at the time of the walkthrough on January 5, 2007. We disagree.

At the time of the walkthrough, possessions of Ebikwo remained in the condo. Ebikwo did not return the keys to the condo after the walkthrough. In fact, Ebikwo was the person who discovered that the condo was flooded on February 12th. A reasonable inference can be drawn from this evidence that Ebikwo had not relinquished control of the condo on January 5, 2007. Therefore, he had the duty, as established by the lease, to keep the premises

in good condition. Ebikwo has not established that the trial court's judgment in favor of the Appellees is clearly erroneous.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.